

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
SEPTEMBER 9, 2020**

**CALL TO ORDER
6:00 PM**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. in the Country Kitchen Building at the Flathead County Fairgrounds, 265 N. Meridian Rd., Kalispell, MT 59901. Board members present were Dean Sirucek, Greg Stevens, Sandra Nogal, Jeff Larsen, Elliot Adams, Mike Horn, and Kevin Lake. Ron Schlegel had an excused absence. Jim Thompson had an unexcused absence. Erin Appert, Erik Mack, and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were 63 members of the public in attendance.

**APPROVAL OF
MEETING
MINUTES
6:01 PM**

Nogal made a motion, seconded by Sirucek, to approve the August 12, 2020 meeting minutes.

Motion passed on a 6-0 roll call vote. Nogal abstained.

**PUBLIC
COMMENT
*(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)*
6:01 PM**

None

**DISCLOSURE OF
ANY CONFLICT
OF INTERESTS
6:01 PM**

None

**PROCEDURAL
OVERVIEW
6:02 PM**

Larsen went over procedure for public hearing for the larger items.

**MONTANA
PERSONAL
WAREHOUSE
(FZTA-20-03)
6:03 PM**

A request from Brian Joos, on behalf of Montana Personal Warehouse I, LLC, to amend the text of the Flathead County Zoning Regulations (FCZR). The proposed amendment includes amending the Mini-storage, Recreational Vehicle Storage conditional use standards to allow for storage for the repair, construction, or reconstruction of any boat, engine, motor vehicle, or furniture, and the storage of any propane or gasoline engine or propane or gasoline

storage tank or any boat or vehicle incorporating such component. The applicants are proposing to add the following language to Section 4.13.070 FCZR, “unless the enclosed building is engineered to accommodate such storage with a minimum of 1 hour fire separation between units using Type X fire-rated drywall and metal panels, or similar material.” The applicants are also proposing to add the following language to Section 4.13.090 FCZR, “unless the structure is engineered to accommodate such use or storage with a minimum of 1-hour fire separation between units using Type X fire-rated drywall and metal panels, or similar material.”

STAFF REPORT
6:04 PM

Erik Mack reviewed staff report FZTA-20-03 for the board.

BOARD
QUESTIONS
6:06 PM

Larsen asked that staff address the negative comments on findings #2 & #3. Mack read the findings and explained the fire districts wanted to see more requirements if they were going to allow more than what was proposed by the applicants.

Nogal asked, if in theory, there could be other types of storage [i.e. jewelry, furniture, and other type of valuables] next to the storage units with combustibles. She was concerned there may not be fire damage but there would be water damage.

Stevens asked if staff had an opportunity to check how other jurisdictions handled these situations. Staff had checked in with fire departments along with Whitefish, Kalispell, and Columbia Falls. Staff reviewed what he had found.

APPLICANT
PRESENTATION
6:09 PM

Brian Joos, with Viscomi, Gersh, Simpson & Joos, PLLP, represented the applicant. He said the text amendment was an opportunity for the county to make this use, which was coming to Flathead County, safer than it would otherwise be. As it stood now, people could build these vehicle storage in the unzoned districts. The unzoned districts did not require any fire separation. The text amendment provided the developer the opportunity to build it in a more desirable district and to make it safer than it would be in an unzoned area. He discussed the recommendation of having a 1 hour fire separation from one of the fire districts, which he thought was acceptable. He addressed a fire district’s recommendation of a 30k gallon tank. He felt that was going a bit too far because, for cost reasons, nobody would ever build that. He noted that 16/18 fire districts that were contacted did not submit a comment.

BOARD
QUESTIONS
6:11 PM

Nogal asked if this type of storage was happening now in the valley. Joos replied that it was coming. She asked what they were going to tell the neighbor who might experience water and smoke damage from a neighboring fire. She was also concerned that if they were going to allow this use, owners

were going to have issues with insurance. She wondered why they were not looking at having a facility that was strictly flammable storage and car repair maintenance as opposed to putting them next to units where people would be storing their non-combustible valuables. Joos explained that currently storage units could store boats, cars, fuel tanks, etc., adjacent to or behind these types of units, which presented the same risk. The reason why they had not seen designated storage units was because it was not permitted in mini-storage zones. It was only permitted in unzoned areas. Other jurisdictions had mixed uses for storage units. He also discussed the ability to have covenants and rules for the storage units.

Larsen asked if Montana had building codes that would regulate this in an unzoned area. Joos said they did not.

**AGENCY
COMMENTS**
6:14 PM

There were no agencies present to comment. Written comment was reviewed in the staff report.

**PUBLIC
COMMENT**
6:15 PM

None

**STAFF
REBUTTAL/
COMMENTS**
6:15 PM

Staff addressed Nogal's concern regarding designated storage units. He said they were allowed in industrial zones and there were such units that existed. Nogal had seen that as well on Hwy 2.

Staff said the fire chiefs had a monthly meeting in which they discussed this matter. They did not comment on the issue because most felt it was out of their jurisdiction. Staff did try to make it clear that [the text amendment] would affect the whole county.

Larsen asked if this would be allowed in an industrial zone. Staff explained that in an industrial zone, you can do boat, RV, and car storage (enclosed). They were more of a warehouse structure than a mini storage. Larsen asked if you could build a mini storage in those districts. Staff replied yes, as a permitted use. Staff said, the way it was worded, you would be allowed to store cars. It was worded differently than the other zones.

Adams asked if RV or boat storage units were dedicated only to those uses. Staff said, the one he was thinking of, was only dedicated to boat storage.

Sirucek asked if staff had a positive or negative recommendation. Staff said he was just trying to stick with the facts.

**MAIN MOTION
TO ADOPT F.O.F.
(FZTA-20-03)
6:19 PM**

Sirucek made a motion, seconded by Horn, to adopt staff report FZTA-20-03 as findings of fact.

**BOARD
DISCUSSION
6:19 PM**

None

**ROLL CALL TO
ADOPT F.O.F.
(FZTA-20-03)
6:19 PM**

Motion was passed unanimously on a roll call vote.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FZTA-20-03)
6:20 PM**

Sirucek made a motion, seconded by Lake, to recommend approval of FZTA-20-03 to the Board of County Commissioners.

**BOARD
DISCUSSION
6:21 PM**

Sirucek discussed OSHA requirements. As a previous safety officer, he felt 1 hour to put out a fire was sufficient because there would be sufficient fire retardants. He was in favor of the proposal and felt that something in the regulations was better than nothing.

Nogal said her concern was that it wasn't going to be just storage but repair garages as well and felt *that* was going a little far.

Stevens said it was an opportunity to update the regulations addressing storage units. Nobody regulated what could be put in a storage unit. He felt it was an opportunity to upgrade the regulations. He was on the fence [regarding his vote]. He felt, as it stood, if somebody wanted to put a motorcycle in one they would/could.

Nogal asked Stevens if he was comfortable with people working on their vehicle in the storage unit. Stevens did not envision commercial repair but if somebody had a vehicle that needed some maintenance and they did not have an enclosed area at home, this would keep them out of the harsh weather, and he did not see a problem with it.

Adams said, if he was working on a vehicle in a storage unit, it was not something that a government agency could mandate. That would be up to the owner. Adams wondered if they could condition a 2 hour firewall.

Mussman said they could amend the request to require two hour fire wall and

discussed logistics.

Adams felt it might not be a bad idea to change it to a two hour fire wall. There was no way of stopping someone from storing what they wanted. If they were going to amend it, he felt it might be a good idea to change it.

Stevens asked Sirucek to go over what the federal government OSHA requirement for that type of facility. Sirucek said it was 1 hour, as he remembered it. Stevens felt if OSHA said it was good enough than that was good enough for him.

Larsen said he was on the fence and agreed with Nogal as well. He would like to see a two hour fire wall required.

**MOTION TO
AMEND TEXT
AMENDMENT
(FZTA-20-03)
6:29 PM**

Stevens motioned, seconded by Lake, to amend the verbiage of the text amendment FZTA-20-03 to state:

4.13.070 All storage shall be kept within an enclosed building, except propane or gasoline engines or storage tanks or any boat or vehicle incorporating such components, which shall be stored in screened exterior areas *unless the enclosed building is engineered to accommodate such storage with a minimum of 2 hour fire separation between units using Type-X fire-rated drywall and metal panels, or similar materials.* This provision shall not be interpreted to permit the storage of partially dismantled, wrecked, or inoperable vehicles.

4.13.090 The repair, construction, or reconstruction of any boat, engine, motor vehicle, or furniture, and the storage of any propane or gasoline engine or propane or gasoline storage tank or any boat or vehicle incorporating such components is prohibited within any structure on a tract of land designated as a mini-storage or recreational vehicle storage facility *unless the structure is engineered to accommodate such use or storage with a minimum of 2 hour fire separation between units using Type-X fire-rated drywall and metal panels, or similar materials.*

**BOARD
DISCUSSION
6:30 PM**

None

**ROLL CALL TO
AMEND TEXT
AMENDMENT
6:30 PM**

Motion passed unanimously on a roll call vote.

**BOARD
DISCUSSION
6:30 PM**

Larsen had been on the fence about this application but had talked with some people who had storage units and there was no policing what went in them. There was a chance vehicles would end up in storage units anyways and there would be no provision made for fire protection. He felt this gave a way to get a better unit installed in the regulations that brought attention to it. He was going to support the text amendment.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZTA-20-03)
6:31 PM**

Motion passed on a 6-1 roll call vote. Nogal dissented.

**LOWER VALLEY
RANCHETTES
(FPP-20-15)
6:31 PM**

A request from 406 Engineering, on behalf of Sandra O'Connell for preliminary plat approval of Lower Valley Ranchettes, a proposal to create 5 residential lots on 83.9 acres. The property is located at 52 Swan View Road North, off Lower Valley Road between Tango Fox Lane and Swan View Road and would be served by individual wells and septic systems.

**STAFF REPORT
6:32 PM**

Erik Mack reviewed staff report FPP-20-15 for the board.

**BOARD
QUESTIONS
6:34 PM**

Larsen asked if there was a fire turn-around on the map. Mack discussed that they had requested a variance to the width of the paving. He recalled there was a cul-de-sac designated for a turnaround.

Larsen asked about the road width variance and if it was wide enough for a fire truck and a car to pass. Mack said, in his opinion, it was probably not. The 17' strip was a short amount. He felt it met the variance criteria. The Board discussed, at length, access concerns and approaches in detail.

**APPLICANT
PRESENTATION
6:38 PM**

Nathan Lucke with 406 Engineering, 35 8th St E, represented the applicants. The applicants were farmers planning for their future. He discussed the proposal and DEQ approval process. The area was devoid of trees and the roads were very straight. He could foresee the Road and Bridge Dept issuing permits because it was a very safe location for access. He felt buyers may want to use the other roads and addressed if the other roads were sufficient enough to cover the traffic by discussing the national standard for how roads were designed, their guidelines, and statistics.

**BOARD
QUESTIONS
6:43 PM**

Larsen asked what the road width was. Lucke was unsure but estimated it to be 18' shoulder to shoulder. Larsen said he remembered that being the standard.

**AGENCY
COMMENTS**
6:44 PM

No agencies were present to comment. Written comments were reviewed in the staff report.

**PUBLIC
COMMENT**
6:45 PM

None

**BOARD
QUESTIONS**
6:45 PM

**MAIN MOTION
TO ADOPT F.O.F.
(FPP-20-15)**
6:45 PM

Stevens made a motion, seconded by Sirucek, to adopt staff report FPP-20-15 as findings of fact.

**BOARD
DISCUSSION**
6:45 PM

None

**ROLL CALL TO
ADOPT F.O.F.
(FPP-20-15)**
6:45 PM

Motion was passed unanimously on a roll call vote.

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-20-15)**
6:46 PM

Stevens made a motion, seconded by Lake, to recommend approval of FPP-20-15 to the Board of County Commissioners.

**BOARD
DISCUSSION**
6:46 PM

None

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-20-15)**
6:46 PM

Motion passed unanimously on a roll call vote.

**BAKER 80
SUBDIVISION
(FPP-20-09)
6:47 PM**

A request from GBSB Holdings, LLC with technical assistance from TD&H Engineering, Inc. for preliminary plat approval of Baker 80 Subdivision, a proposal to create 16 residential lots on approximately 80 acres. The proposal would be served by individual wells and septic systems. Access to each lot would be from an internal subdivision road via Prairie View Road and Whitefish Village Drive.

**STAFF REPORT
6:47 PM**

Erin Appert reviewed staff report FPP-20-09 for the board.

**BOARD
QUESTIONS
6:50 PM**

None

**APPLICANT
PRESENTATION
6:51 PM**

Doug Peppmeier with TD&H Engineering, 450 Corporate Drive, was the representative for the applicant. He agreed with the staff report with the exception of Finding of Fact #3 and Condition #21, which require a road maintenance mechanism and proof of legal access for Whitefish Village Drive. He did not understand why they were being required to provide proof of legal access for a road that was dedicated as a public access easement. The project had two access points; Whitefish Village Drive to the north and Prairie View Road to the south. It was never the owner's intention to pave Prairie View Road since there was a dedicated public access easement to the north. The applicant was willing to participate in a road maintenance agreement but Whitefish Hills Village (WHV) HOA may not consent, which would force them to improve a portion of Prairie View Road. During preliminary plat of WHV, Brady Way, which was a County right-of-way, was relocated and replaced with Whitefish Village Drive and Prairie View Road. The preliminary plat approval for WHV did not include any specific conditions restricting adjoining properties from using the public access easements nor required adjoining properties to provide proof of legal access to use roads within WHV. The report discussed the relocation of a dedicated County road and was the reason the County Commissioners required WHV to provide a public access easement to ensure continued access to adjacent unsubdivided land. He read from sections of the WHV preliminary plat staff report and discussed comments from the County Attorney's Office and the DNRC, which supported the continuation of the public right-of-way for continued access to neighboring properties to the west and the state lands. Public access easements on the face of the final plat was required to be shown. The portion of Prairie View Road within WHV was not required to be paved, it was just required as a public access easement. He questioned what would happen if WHV did not agree to a shared road maintenance agreement, even though the applicant was

willing to participate. He proposed language included in the CC&Rs. He discussed comments from Tara DePuy stating a latecomer's agreement cannot be required. They had asked what proof of legal access would be and have not received an answer. He stated if there was a fire, the only way out of WHV was via Stelle Lane. If the applicant built the proposed connection road, there would be an additional access for both subdivisions.

**BOARD
QUESTIONS
7:03 PM**

Sirucek wanted clarification that the lawyer had sent a letter to the Whitefish Hills Village HOA. Peppmeier stated they had but they had not received a response to said letter.

Nogal asked what the proposed access was for Baker 80 when they originally approved the file. Peppmeier stated it was originally Brady Way, which ran north to south to the edge of the subject property and then switched to Prairie View Road, which paralleled the subject property and connected to KM Ranch Road. Nogal stated she was trying to understand the roads when they originally approved the preliminary plat. Peppmeier referenced a map to show the former Brady Way ROW.

Horn discussed the history of the property as being farmland. He wondered if the attorney had knowledge about the prescriptive easement throughout the history that followed throughout the road. He said people had used that road. Peppmeier discussed the easement history.

Richard DeJana, Esq. was the attorney representing the applicant. He explained the legal access was right on the plat because it was a public road. He said, initially Flathead County recognized that there was a public easement. He referenced an email from planning staff, sent in August 2019, stating the portion of Prairie View Road within WHV does not need to be improved because it was a proposed dedicated right-of-way. If they needed to prove that they had a public easement, they were going to sue Flathead County.

**AGENCY
COMMENTS
7:11 PM**

No agencies were present to comment. Written comment had been reviewed in the staff report presentation.

**PUBLIC
COMMENT
7:12 PM**

Gary Winter, 1322 Whitefish Village Drive, spoke in opposition and was representative and speaker for the homeowners within Whitefish Hills Village (WHV). He distributed copies of the presentation to board members and staff, which had previously been submitted as public comment. He clarified that they did not respond to the letter from the applicant's attorney because it was offensive and assumed they were opposed to the development. He discussed the easement shown as Prairie View Road within WHV was provided to serve as emergency access for the DNRC land and Section 4.7.15 FCSR stated emergency access roads shall not provide primary access to a subdivision. He referenced the certificate of private roadways on the WHV final plat. Prairie

View Road and Brady Way were never actually constructed all the way to the subject property. He discussed the previous zoning map amendment on the subject property which alluded to Prairie View Road and KM Ranch Road providing access to the property. Their concerns included decreased property values, split HOA, phased development, construction traffic, and how to assess road maintenance costs.

**APPLICANT
REBUTTAL/
COMMENTS
7:33 PM**

Peppmeier stated that much of the public comment pertained to the zone change. Zone changes were not development specific and did not set requirements for subdivision. He reiterated Condition #24 of WHV preliminary plat approval required public access. Phase 4 was directly north of the subject property and included the relocation of a county road and was required to remain a public access point. He asked why they were being required to provide proof of legal access and what was considered proof.

**STAFF
REBUTTAL/
COMMENTS
7:36 PM**

None

**BOARD
QUESTIONS
7:36 PM**

Sirucek asked if it was appropriate to make a decision to override the county attorney who set up the guidelines. Mussman said the board needed to take the information from all things heard tonight and forward a recommendation to the County Commissioners. Mussman responded the Board was being asked to look at all the information including the staff report, subdivision regulations, applicant presentation, public comment, and the correspondence between staff and county attorneys, and make some kind of a recommendation. If the Board is uncomfortable with the proposed access, it could influence the recommendation.

Horn asked staff about KM Ranch and why they had not been noticed about the subdivision. People may have been concerned about travel and adding on to KM Ranch Road and it appeared they did not have a voice in this hearing because they were unaware. Mussman responded the application was legally noticed by mail and legally posted.

**MAIN MOTION
TO ADOPT F.O.F.
(FPP-20-09)
7:39 PM**

Stevens made a motion, seconded by Nogal, to adopt staff report FPP-20-09 as findings of fact.

**BOARD
DISCUSSION
7:40 PM**

Stevens pointed out that the County Commissioners had decided not to accept any new roads within subdivisions because the County did not want to be responsible for maintenance, however, the roads were to remain open to the

public. Thus, property owners within subdivisions owned the roads for purposes of maintenance and taxes. It was his understanding that all subdivision roads were open to the public and it stated this on the plats.

Nogal was concerned about the difference between public access versus using one development to get through to another development. She believed they were not the same thing. She referenced the certificate of private roadways on the final plat which is signed by the Commissioners.

Stevens asked DeJana to provide his recollection of why this was done and what the impact was of the statement, on the plat, that all subdivision roads were dedicated as public access easements. DeJana replied the internal subdivision roads in WHV were dedicated as public access easements on the final plats. The subdivision regulations required all internal subdivision roads to be dedicated as public access easements to encourage developments to be tied to other developments by providing future roads. Stevens responded to the public comment regarding Section 4.7.15 FCSR and confirmed it stated emergency access roads shall not serve as primary access but only the first paragraph and was referring to use of the roads, and went on to explain that unless you do an exemption, the roads must be public access easements. Access meant the ability to reach an area, so when a public access was created, it meant that it was the primary access to get in and out. He did not know how to address the Commissioners' decision, but the public access easements had been created and roads were going through. This had been the process for a long time. He acknowledged the certificate of private roadways on the plat as deceptive. He questioned if the dedicated public access was there, why are they being told otherwise?

Nogal read the letter sent from DeJana to WHV which stated construction traffic will come from Prairie View Road rather than Whitefish Village Drive because it was a more direct route and cost effective. She did not understand the double standard of wanting to utilize Prairie View Road when it saved a few bucks, but not using it as the primary access. They already had access to their property from Prairie View Road. DeJana replied the Board granted public access from Whitefish Village Drive when the preliminary plat was approved.

Stevens pointed out that this policy had caused problems ever since the Commissioners implemented it because they keep the roads private when they could require roads to be dedicated to the County during plat approval. If the County did not want to plow the snow they would not take them. Subdivision roads use to be taken by the County. The reason for dedicating subdivision roads as public access easements was to extend them and provide access to surrounding developable land. This has caused so much confusion and this board was not capable of figuring out which side was correct from a legal standpoint. He believed they were public access easements but acknowledged

others had a different viewpoint and understood those arguments.

Stevens said his reasoning wanting to amend condition #3 was the proposed condition required a buy-in which could not be done. The Board had gone through this many times and they could not impose an impossible condition. This needed to go to district court. He did not want to play district court judge and turn down the subdivision. He wanted to amend Finding of Fact #3 in order to strike the impossible condition. He continued the discussion by stating a public access easement was an easement to allow the public to use the road. The only reason the roads were private was because the County did not want to maintain them, otherwise, they would have been required to be County roads for the purpose of extending access from one development to the next. It was his understanding the Commissioners added the public access easement requirement to facilitate orderly development and growth.

**MOTION TO
AMEND F.O.F. #3
7:54 PM**

Stevens motioned, seconded by Sirucek, to amend Finding of Fact #3 to state:

3. The road system appears to be acceptable ~~with the imposition of conditions~~ because the internal subdivision road would be paved and constructed to Flathead County Road and Bridge Department standards. ~~the applicant would be required to pave approximately 69.6% of Prairie View Road between KM Ranch Road and the southern termination point of Baker Heights Drive unless proof of legal access and a road maintenance mechanism for Whitefish Village Drive is provided, the proposed subdivision has~~ **The proposed subdivision has** the potential to increase traffic on Whitefish Village Drive by 160 ADT, and approach permits from the Flathead County Road and Bridge Department will be required for the approaches onto Prairie View Road **if needed**.

**BOARD
DISCUSSION
8:01 PM**

Sirucek shared that, in his opinion, there were two ways to address the issue. Stevens presented one option. There were two legal opinions from two attorneys who were in opposition. Prior to going to district court, there could be a meeting of minds with the Commissioners to decide where the County actually sat on this situation. In his opinion, this proposal was not ripe for the Board to act on. The proposed amendment would direct the outcome and he was not comfortable with that. There were arguments for both ways. He reiterated that the Commissioners have created this situation and they need to provide direction.

Larsen recalled previous discussion regarding wanting to make roads open to public use to plan and connect subdivisions. He had a problems with private roads that were open to public use. He understood that once private roads were dedicated to the public, they could be used by the public and connect to other subdivisions but the County had mucked that up over the last several years on previous projects where they allowed a person to block off a private road that was open to public use. The County had made determinations which made it difficult for the Planning Board to do what they were supposed to do.

He agreed with Stevens that the Commissioners, in conjunction with legal counsel, needed to decide what to do. They could spend a lot of time trying to change the wording but it would not matter because the Commissioners needed to make a ruling. The decision was made by County Commissioners, many years ago, that the County would not accept new roads. This had created many legal issues through the years. He expressed frustration about not having clear knowledge. His preference was to forward it to the Commissioners, as it was, and let them deal with it.

**ROLL CALL TO
AMEND F.O.F. #3
8:06 PM**

Motion failed 3-4 on a roll call vote. Larse, Nogal, Lake, and Sirucek dissented.

**BOARD
DISCUSSION
8:07 PM**

None

**ROLL CALL TO
ADOPT F.O.F.
(FPP-20-09)
8:08 PM**

Motion passed on a 6-1 roll call vote. Stevens dissented

**MAIN MOTION
TO
RECOMMEND
APPROVAL
(FPP-20-09)
8:08 PM**

Stevens made a motion, seconded by Sirucek, to recommend approval of FPP-20-09 to the Board of County Commissioners.

**BOARD
DISCUSSION
8:09 PM**

Lake agreed with Larson and felt this was a perfect example. The applicant was not happy with it. The opposition was not happy with it. He agreed that they should send it to the Commissioners to let them deal with it.

Larsen felt the board needed clarification, not just for this proposal, but for others. They could not resolve this legal issue.

Stevens reiterated that the board made recommendations and the Commissioners made the decisions.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPP-20-09)
8:09 PM**

Motion passed on a 6-1 roll call vote. Nogal dissented.

BOARD BREAK
8:10 PM

ROLLING ACRES
(FPP-20-11)
8:27 PM

A request from Betty Trueblood and Unique Realty Developer, Inc., with technical assistance from TD&H Engineering, Inc. for preliminary plat approval of Rolling Acres Subdivision, a proposal to create 77 residential lots on 114.39 acres. The property is located on the west side of Columbia Falls Stage, north of Kingfisher Lane. The proposal would be served by shared wells and individual septic systems and access to each lot would be from new internal subdivision roads via Columbia Falls Stage.

STAFF REPORT
8:27 PM

Erin Appert reviewed staff report FPP-20-11 for the board.

BOARD
QUESTIONS
8:30 PM

Stevens questioned Finding #1 and wondered what type of agricultural production was currently being produced. Staff said it had historically been used for agriculture and deferred to the applicant to answer how it was currently being used. Stevens interjected that it was not producing anything except noxious weeds. He felt Finding #1 was a misstatement of fact. He would address it later.

Larsen addressed the comment from Kate McMahon, AICP, who said the application was incomplete. He asked that the staff address the items individually that were brought up in her report to make sure that they had a complete application before them and no items were missing.

Mussman said once a subdivision application was submitted, the planner went through the required elements that were submitted. There was a checklist and they did not proceed in the review until the application as complete and sufficient. He had every confidence that staff did a comprehensive review of the application materials submitted. Whether or not somebody agreed with everything that was included in an application, did not necessarily mean that it was insufficient, it just meant they disagreed with the information submitted. Mussman felt the application was complete and sufficient and there were people that disagreed with the information submitted. Larsen asked if Mussman disagreed with the analysis from McMahon. Mussman had not reviewed the analysis but disagreed with the statement that it was an insufficient application. Larsen asked that staff go over the items that were listed in McMahon's as not being included in the application. They would later ask staff to go over those in detail.

APPLICANT
PRESENTATION
8:36 PM

Doug Peppmeier, with TD&H Engineering, was the engineer representing the applicant. He gave the reason for postponement of the application being that they were given over 200 pages of comments right before the last meeting. They made the decision to postpone so that they could have the opportunity to

address the concerns. He understood a development like this was a big change and it was up to him to show how they were going to mitigate those impacts. He outlined the process they went through as they prepared for this application and the history of the property. He acknowledged that it was prime farmland, however, it was an unzoned. He discussed the criteria in which they looked at in doing a subdivision. They had been waiting for DEQ significance determination which addressed a lot of the questions and concern and had since received that report. He addressed several public concerns, including, density and traffic. He addressed the comment from BPA in which they had no problem accommodating their request. He addressed the comment from the fire district, in which they had no problem accommodating their request. He addressed the comment from Fish, Wildlife, and Parks and had no problem accommodating their request [to add conditions to the CCandRs]. He addressed that one of the biggest concerns he had heard was that fences would get in the way of allowing wildlife to migrate through the property as they used to. He believed condition #23 addressed that requirement. He had no issues with that.

**BOARD
QUESTIONS
8:44 PM**

Larsen asked they address the concern over DNRC water rights permitting. Peppmeier deferred to Brad Bennett, PG.

Larsen also asked that they address traffic congestion and if the road was too narrow. Peppmeier said Bob Abelin tried to address that [in the traffic study]. Peppmeier said Dave Prunty, with the Road and Bridge Department, basically said the same thing Abelin did. People drove way too fast on the road. It was one of the better roads in the county. Abelin and Prunty both said that it was narrow but Prunty said that was [the same for] county roads throughout the county. If there were conditions that required the widening of the road, they would not look at a single developer to increase all the way down to Hwy 35. He did not know if they could add a turn lane but again, there were no recommendations for that from Planning Staff. They reviewed the traffic study that was provided, which is when they would generate those types of comments. Staff did not have any additional requests.

Larsen asked about the pictures of surface flooding that had been submitted and asked if Peppmeier would like to address that. Peppmeier said they had done a significant amount of field work, for reasons like that. He said it was fairly common for this part of the valley and it was usually a rain on snow or rain on frozen ground event. It was not ground water. Bennett would address that. It was going to be a requirement that needed to be addressed for drainage purposes, but in terms of whether or not it was groundwater, it was not. There was a significant amount of information that supported that.

Larsen asked that Peppmeier address a public comment received that the public school would be overwhelmed with a new subdivision. Peppmeier said they had submitted letters to the school and had not received a comment back.

Based on the calculations, there would be an additional 27 students. They did not receive a comment from the school district.

Larsen addressed the comment from McMahon stating there were no wells or drain fields shown on the drawing that was within the 100' of the exterior boundary of the subdivision. Peppmeier said that Bennett would speak to that. Larsen asked Peppmeier if he wanted to address the drawdown well data from the opposition experts. Peppmeier said he would defer to Bennett because they did drill well and draw down tests.

Larsen also asked about McMahon stating that the traffic study did not comply within MDT traffic engineering manual. Peppmeier pointed out that Abelin was a licensed engineer in the state of Montana. He did not know why they would attack that. Abelin was a licensed professional with the state. He submitted the report to the MDT and to Flathead County. They all reviewed it. He questioned what the exact concern with Abelin's professional opinion was.

Sirucek asked about the environmental assessment and the public safety. He was surprised that electromotive force (EMF) had not been addressed and recommendations were not made as far as distance of buildings to powerlines. He discussed what he had discovered in his research and the recommended setbacks. It was significantly more than the lots that were adjacent to the powerline. He had no idea what the direct measurements of EMF would be there and was unsure if the engineer would know but suggested getting some type of documentation from BPA as to the amount of power at peak levels and other measurements. He was concerned about the lasting health effects of EMF and found new research that showed the effect could be significant.

Peppmeier said the BPA did review this subdivision. He believed there had to be a significant easement. He had no issue if the staff needed to look into that. They were following what they were told by BPA. He thought the comment letter would have addressed that. They were not encroaching on the easement. Sirucek said the federal recommendation was from the EPA and he was not sure if the BPA would speak to those. He asked him to think about the scenario of somebody getting cancer because they were closer to the power lines than they should be.

Brad Bennett, PG, with Water & Environmental Technologies, spoke to the specifics of the DEQ Significance Determination Report for the proposed subdivision. He discussed in detail the groundwater and storm water. He discussed, in depth, water rights.

Larsen asked if the water right had to be completed in order to receive DEQ approval. Bennett confirmed that was correct.

Larsen pointed out there were a lot of concerns and pictures (from 2014)

regarding surface flooding. He asked they address that. Bennett commented that in March 2014, his understanding was, it had snowed and then there was a rain event and nowhere for that water to go. [The surface water] would be addressed with the storm water plan in the DEQ process.

Larsen pointed out that McMahon had reviewed this and submitted a comment, which was correct, that the wells and draining fields within 100' of the exterior boundary needed to be shown on a DEQ lot layout. They required DEQ lot layout for the preliminary plat process. He asked if there would be wells and draining fields within 100' of the exterior boundary. Bennett said he did not know.

Larsen also asked that he address the comments regarding the impact on neighbor's wells and how much it would draw the wells down. He asked Bennett if he knew how much it would draw down the neighbor's wells after drilling the wells in the subdivision. Bennett explained that was why they did the long term tests, then there was site specific data that the DEQ can make projections for the neighbor's wells. As he understood it, the numbers presented in the public comments, were higher than it would actually be. He discussed this in detail.

Larsen asked if they had performed and logged the test holes out there. Bennett said they did. There were comments regarding the modeling in the test holes. Larsen asked if the ground water monitored. The modeling of the test holes showed that it was fairly shallow in the test holes, therefor concluding that there was high water in the area. This was different than what Bennett had found with his monitoring. Bennett explained that when they looked for modeling and test holes, it was something that was noted when they saw it. What they did see was sporadic and minor. It was noted at that time and followed up with monitoring and test holes which suggested no shallow water.

There were comments regarding the DEQ submittal on the preliminary plat. Larsen had noticed there was a well isolation zone that intersected a draining field. That would not be allowed by DEQ. There was some issues that Larsen had noticed with the lot layout that the opponents had also identified. Another was also wells that were close to the road right of way. He asked if Bennett had any comments on that specifically. Bennett said the location of the wells and draining fields could be tweaked. There was sufficient room on each lot to accommodate a draining field and well.

Sirucek asked what depth the wells would be and which aquafer would they be drawing from. He wondered if there would be sufficient water layers shallower than the deep alluvial aquifer. Bennett said the target aquifer would be the deep alluvial aquifer. The depth would be variable in the area. The surface of the aquafer was not linear. He anticipated depths from 130' to 300' below

ground surface. He discussed in depth the data he had collected in the area and the different aquifers in the area.

Stevens addressed a comment made in the report by Kathleen McMahon, AICP. He ran into numerous occasions where people brought in pictures of groundwater and assumed it meant shallow ground water when, in all actuality, it did not. Stevens talked about the process of getting approval and the buck would stop with DEQ.

**AGENCY
COMMENTS
9:19 PM**

No agencies were present to comment. Written comments were reviewed in staff report

**PUBLIC
COMMENT
9:19 PM**

Roger Sullivan, Esq., with McGarvey Law, represented the opposition of the application. He gave an introduction and said he had a team of professionals That were going to give testimony tonight. He also had a group of public members that wanted to give testimony.

Kathleen McMahon, AICP spoke in opposition of the application. She was a planner that had been hired by the Fairview Neighborhood Association. She discussed her submitted report with her findings that contradicted the findings of the staff report and application.

Dr. Willis Weight, PhD, PE Hydrogeologist was hired by Fairview Neighborhood Association. He discussed his analysis which he had prepared and submitted for review at great length. He explained what was going on in the subsurface and prepared a 3-dimensional geological model which he presented.

Hazel Johnston, 970 Columbia Falls Rd., spoke in opposition of the application. She was a neighbor of the proposed subdivision. She gave her personal history and connection to the property. She was concerned about protecting the wildlife.

Doug Manning, 291 Fairmont Rd., spoke in opposition of the application. He had the privilege of farming this property until the last year. He discussed the importance of agriculture in the valley. He wanted to protect the good land in the valley and in the neighborhood of the proposed subdivision. He was concerned about losing an industry that was already backed in to a corner.

BJ Lupton, 704 Country Way, spoke in opposition of the application. He gave his personal history with the area of the proposed subdivision. He called it prime land. It was a wildlife corridor. He was concerned about the mitigation that had been proposed and he was concerned about eliminating the agricultural land and wildlife in the area. He believed any development on this land was wrong.

Matthew Keller, Kingfisher Rd., spoke in opposition of the application. He reiterated that the land was beautiful. One thing that had stuck out to him was the lack of attention to detail in the application. He questioned whether or not some of the subsequent questions that had been ask of the applicant had really been answered to satisfaction.

Don Hauth, 260 Kauffman Lane, spoke in opposition of the application. He explained his personal connection with the property. He was concerned over the environmental impact the subdivision would have; ruining the lower rim. He called it the last safe haven for valley bottom species. He was concerned over the impact it would have on the wildlife.

Matt Gerhardt, 214 Garland, spoke in opposition of the application. He gave his personal history in the valley. He was concerned for the loss of agricultural land and said there was a lot of premium land not being used for crop. He felt what was being proposed was in complete disregard to anything it bordered. He was also concerned for the wildlife.

Ken Siderius, 688 Madera Trl., spoke in opposition of the application. He gave his personal history in the valley. He was concerned over the loss of agricultural land and discussed the people in the area that made a living farming. He was also concerned about the impact that it would have on schools. He was also concerned about the wildlife.

Dan Smith, 767 Kingfisher Lane, spoke in opposition of the application. He gave his personal history with the neighborhood. He was concerned about the ecology; one of the biggest wildlife corridors in the area and was concerned of the negative impact. He was also concerned about losing prime farm ground. He also mentioned that the standing water drained to the north, into the surface water of the Flathead River. He was concerned about the aquifer. He was concerned about the traffic impact at the intersection between HWY 35 and Columbia Stage Road.

Larry Gerek, 324 Pine Bench, spoke in opposition of the application. He gave a quick history of his property and discussed how they had well problems already and was concerned about the impacts a large subdivision would have on the aquifer. He was also concerned about traffic impact, the wildlife, and the value of his property.

Paul Strike, 295 Middle Rd., spoke in opposition of the application. He was a farmer [sweet potatoes] in the neighboring area. He discussed his family history of farming. He was concerned about losing prime farm land and the trickle down affect losing the land causes.

Dr. Linda Kilts, 1055 Columbia Falls Stage Rd, spoke in opposition of the application. She gave her history as to how they came into their property to start an organic farm. She wanted to preserve farmlands. She was concerned over the national security and food supply, designated agriculture for our food security. She was concerned about losing farmlands.

Shane Ackerly, 864 Kingfisher Ln., spoke in opposition of the application. He discussed his personal history in the valley and how they decided on buying that particular location. He could not imagine what they saw now, herds of deer, being replaced by many homes. He felt high density was contrary to what people felt was Montana.

Dr. Mark Johnston, 970 Columbia Stage Rd., spoke in opposition of the application. He gave his family history of the land that bordered the property. He was concerned about the environmental impact that such a development would have on the future and felt the need to protect what they had now. He felt that thoughtful planning would better serve our economy.

Sullivan wrapped up the presentation. He discussed the standards and requirements that had not been met in this instance. He said the requirements for disclosure of information must be complete and had not been met with this application. He discussed the reasons why he felt why it did not happen and was fundamentally unfair. He felt that critical information had been withheld and was not disclosed [to the public]. The applicant's engineers had come tonight with information that they had not seen. It was in direct violation of the new information requirements of the regulations. He felt it was a violation of the fundamental spirit of the Montana constitution that recognized as a fundamental right, the participation of proceedings just like this. It required the disclosure of information so that the interested public had an opportunity to respond to it. To spring information at the last minute was not only illegal, it was just simply "un-Montana". For that reason, he felt it should be continued so that they had an opportunity to respond to what was sprung upon them. The reason for that was that the information that the engineers had withheld was fundamental to both the determination by the Planning Board, The Commissioners, DEQ and DNRC to determine whether or not this urban density subdivision, plopped down in the middle of farmland, met requirements for all entities. He continued to discuss his frustration with the allegedly withheld information and why he felt the application should be denied tonight based on those fatal flaws. He said the application and supplemental information were legally insufficient, scientifically inaccurate, and the application this night should be denied. If it was not denied then it should be continued because they did not have the fair opportunity to respond to the new information. He provided a word document for the Board to use as they worked through each of the staff's findings, which he stated had no correlation to the facts of record. This document included suggested findings of facts to "help" assist them so that they could be "tethered to the facts of

record". He said this was an instance where the urban scale development would be placed in a particular place that was simply wrong.

Stevens interjected that he found it humorous that Sullivan would complain about untimely information when, at the last hearing that had to be rescheduled, they had turned in a couple hundred pages of information for the Board to review the night before the hearing. They could not possibly review that much stuff and yet Sullivan was complaining because there was not enough time for them to review the information. Stevens said he wished Sullivan would give them the same consideration that they would like to have for themselves.

Johnston said it took them weeks and weeks to finish the reports. The developer had months ahead of them and they needed to have the organization and to raise money to hire an engineer. It took them time. There was no desire to keep them waiting but the reality was that it took them months to hire the people and obtain the reports. They were way behind the developer. He said it was a whole different situation.

Sullivan said he appreciated the concern and in normal times, he would agree. He said the distinction of the comment, as members of the public they were allowed to submit the comment when they did. The applicant and developer had strict timelines.

Stevens said this was not the first time the Board had been hit, the day before a meeting, with hundreds of pages to try and go through in one night. They were volunteers. It was really inconsiderate to plop that volume of stuff the night before or the day of a hearing.

Stacy Isch, 643 Rock, was the applicant. She was in support of the application. She gave her personal history of the land.

Jana Wisher, 120 River Estates Dr., spoke in opposition of the application. She gave history of her property. She believed a precedent had been set. She was afraid that it would lose its rural feel and become urban.

Mayre Flowers, with Citizens for a Better Flathead, spoke in opposition of the application. She wanted to emphasize a few points beyond her comment that had been submitted. She wanted to respect the family that was trying to sell. She raised the issue of having more development that relied on septic tanks which would eventually get pumped and put on other land. She felt they needed to require the safety issues of roads and other factors besides levels of service.

Jerry Hagman, 1834 MT HWY 206, spoke in opposition of the application. He was concerned that it was going to go to litigation.

Michele Mayberry, 58 Ranchetts Ln, spoke in opposition of the application. She was concerned about the safety of traffic and the impact of the Columbia Falls Stage and HWY 35.

**APPLICANT
REBUTTAL/
COMMENTS**
11:16 PM

Peppmeier felt their professional credibility had been attacked. He agreed with Stevens and felt like Sullivan's comment was "the pot calling the kettle black" after submitting 200 pages the night before [a hearing]. He explained the letter had been at DEQ, along with the application, and they received the response and submitted it. He felt there was a perception that tomorrow a shovel would go in the ground. This was the preliminary plat process, not the final design process. This would go to Commissioners, if it even went that far, then to the state for DEQ and DNRC (who also looked at all the information). The reason why they did not provide information to Dr. White was because it was not required in the subdivision regulations to provide that information to him. They provided it to the County and the State, and they were following the state guidelines.

The site distance was in response to the traffic engineer who did look at that intersection. It was 1500' both ways (1/4 of a mile). There was a statement to that.

In regards to the perception that this was an incomplete application, they had followed the guidelines. They received their sufficiency and completeness letter. If items were missing, staff would contact them and they would provide that information.

Bennett discussed some of the discrepancies in Dr. Weight's model. He said a model was a helpful tool but only as good as the data that was put in it. In his professional opinion, the two wells of topic, being located where they were led to the question of where he got the data and how he could be sure that there was drainage going in that direction if there was no information on those wells.

**STAFF
REBUTTAL/
COMMENTS**
11:21 PM

Larsen referenced his question earlier in the meeting and asked if staff had an opportunity to see if they had to have the items that were listed as not being there by the opposition. Mussman said the regulations also stated that the Planning and Zoning office shall have the discretion to waive one or more of the items listed in appendix B. Mussman said he stood by his earlier statement that they went through the information received and either felt that it was not necessary to include everything in Appendix b or they had sufficient information to continue the review.

Larsen asked again if the items on page 2 were required. Mussman said they

**BOARD
QUESTION
11:24 PM**

were required in certain circumstances but the ones that they did not receive, like a fuel reduction plan, they felt like they could waive that requirement. They had the discretion in the regulations to do so.

Larsen asked Mussman if the staff's opinion was that it was a complete application and Mussman agreed.

Stevens asked what a knickpoint was. Dr. Weight said it was where surface drainage spilled over an embankment and cut that went down. Stevens said that it did not have anything to do with the ground water flow, absent other evidence, a nick point in and of itself was where the surface water flowed down.

Stevens asked him to confirm where the water was flowing. Sullivan had mentioned the DEQ degradation letter was not valid information and was incorrect. Stevens pointed out that everything that was given to them tonight was going to go to DEQ. When they received it, they would evaluate it, and decide the water flow. Weight said he was just saying, since they were at the front lines, that if they saw something that was a bad idea then they could stop it before it became a big headache for everyone else. He was trying to point out the problems of where the waste water would go.

Larsen asked Dr. Weight if he had done any site specific pump testing data. He replied he was the first person to do a ground water numerical model of the whole Kalispell Valley. He integrated all the data that he was aware of. The numbers he used were reasonable and appropriate to the area. Larsen asked if they had done a pump test to any wells in that area. He replied he did not but there was published data.

Larsen asked if he had done any site specific exploration, like drilling any test wells. Dr. Weight said he did not. He was hired in May. They did a site visit in July but he did not feel comfortable going on to people's property and doing a bunch of stuff without permission.

Larsen asked if he was familiar with DEQ's procedure's manual on how to do a nondegradation analysis. Dr. Weight said he was. Larsen said that they typically had certain criteria that had to be used to get the groundwater flow. Larsen just wanted to make sure. Dr. Weight said he had written three books. Larsen understood that.

Larsen asked about the elevations for the wells and if that was placed on LIDAR. He wondered how he came up with the location for the wells for the geological model. Dr. Weight said it was published information. Larsen confirmed that it was not surveyed data. Weight said no but the purpose of doing these things was to identify any problems, which he had discovered.

Larsen was only trying to get information on how he did things.

**BOARD
DISCUSSION
11:30 PM**

Larsen asked if they wanted to continue with board discussion or continue it at the next meeting. He preferred the later. The public hearing had been closed but he didn't want to do board discussion this late.

Mussman interjected, depending on which direction they wanted to go, they might have to go through many of the findings. This would take more time than what they wanted to spend tonight.

**MOTION TO
CONTINUE
BOARD
DISCUSSION AT
OCTOBER 2020
MEETING
(FPP-20-11)
11:33 PM**

Larsen made a motion, seconded by Nogal, to continue board discussion at the October 14, 2020 Planning Board meeting.

**BOARD
DISCUSSION
11:33 PM**

Stevens thanked the members of the public for taking part of the hearing. He gave a shout out to Isch, who came out when most people were in opposition to her application. It was courageous of her. Stevens said he had seen this before, where old farmers had financial needs and people did not think about them. All they thought about was it was farmland. He knew it was farmland. Why was nobody farming it? Sometimes people need medical care, or retirement and their only asset was their land. He did not think it was the right solution that the county government could keep them from using their asset. He felt there was a better solution. People forgot that agriculture was a business. If there was no profit in that business, do they receive a life sentence? "You will farm until you are no longer here". He didn't think that was the right way to proceed.

**ROLL CALL TO
CONTINUE
BOARD
DISCUSSION AT
OCTOBER 2020
MEETING
(FPP-20-11)
11:37 PM**

Motion was passed unanimously on a roll call vote.

**OLD BUSINESS
11:37 PM**

None

NEW BUSINESS None
11:37 PM

ADJOURNMENT The meeting was adjourned on a motion by Nogal and Sirucek at
11:38 PM approximately 11:38 p.m. The next meeting will be held October 14, 2020.



Jeff Larsen, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 10/14/20